

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
*RESIDENT JUDGE*

SUSSEX COUNTY COURTHOUSE  
ONE THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947

April 23, 2009

N440 State Mail  
Eugene Hickernell  
James T. Vaughn Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

**RE: Defendant ID No. 0302014998 (R-1)**

Dear Mr. Hickernell:

On April 8, 2009, you filed your first Motion for Postconviction Relief. It is untimely and therefore, must be procedurally barred pursuant to Superior Court Rule 61(i)(1).

Following the entry of a guilty plea on two counts of rape in the third degree, and consideration of a presentence investigation, the Court sentenced you on May 26, 2006 to ten (10) years incarceration on each of the aforementioned offenses. These sentences were to run consecutively to the sentence you were serving at that time in Florida.

In your present Motion for Postconviction Relief, you allege that following your guilty plea and subsequent sentence, your lawyer was ineffective for failing to advise you as to the grounds for, and probability of success for, an appeal. You argue that your lawyer made you aware of the cost of the appeal, but failed to inform the Court that you did wish to appeal. Now, approximately three years later, you wish to have ineffective assistance of counsel be a basis to have the matter reviewed on appeal. Rule 61(i)(1) requires that a postconviction application be filed within one (1) year from the date the sentence became final. That would have been May 26, 2006. Surely you knew within the year that no appeal had been filed, and therefore this application is untimely and must be summarily denied.

In Ground 2, you complain that you did not have the opportunity to review the presentence report; and in Ground 3, you complain that your attorney did not adequately

review the report with you in order for you to meaningfully comment at sentencing. For the same reason stated in Ground 1, this application is too late. Since there was no appeal, the final date is May 26, 2006; and Rule 61(i)(1) requires summary dismissal.

For the aforestated reasons, your Motion for Postconviction Relief is denied.

**IT IS SO ORDERED.**

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

baj

cc: Prothonotary  
Department of Justice